

# LIVINGSTON EMPLOYER BREEZE

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## **NEW INDEPENDENT CONTRACTOR RULES**

**By Jerri Miller**

This past session of the Montana Legislature made sweeping changes to the Independent Contractor law. These changes will make it much more difficult for an individual to obtain an IC exemption and provides specific penalties for employers who require IC exemptions for individuals who actually are working as employees.

To quote directly the text on the IC exemption application:

Notice to Employers: Montana law prohibits employers from avoiding their responsibility to provide workers' compensation insurance for employees. An employer may not require an employee through coercion, misrepresentation or fraudulent means to adopt independent contractor status or exert control to a degree that destroys the independent contractor relationship. In addition to any other penalty or sanction, a person or employer who violates a provision of the law is subject to a fine to be assessed by the Department of up to \$1,000 for each violation.

It will now cost the individual IC applicant \$125.00 to obtain the 2 year exemption certification. In addition, they must provide documentation for each trade, occupation, profession or business that totals 15 points from a very select list of documents and items.

If the worker provides points proof and is granted an independent contractor certification, he/she waives all rights and benefits under the Workers' Compensation Act in Montana.

Then, once completed, the form must be notarized prior to submission. It used to be that the Notary could just check a piece of identification such as driver's license and complete the form. Now, the Notary must place the applicant under oath before executing the affidavit which makes it a sworn statement. Being the person in our office who notarizes 90% of these forms, I am now very reluctant to perform this service if the points proof is not attached. So, what's the bottom line here? Simply put, if you plan to retain the right to control or exercise control over the worker, the worker is NOT an independent contractor. He/she is an employee. And, my suggestion to you would be that you wait to actually see and touch the certificate BEFORE you would put that individual to work. Keep a copy of it on file and at the jobsite.

Need more information on these changes? Give us a call. We will be happy to provide you with copies of the application affidavit as well as the points list, or it can be found at [www.mtcontractor.com](http://www.mtcontractor.com).

## **IS YOUR EMPLOYEE WORTH A BRAND NEW BMW?**

**By Zanya Betley**

A company in Atlanta, Revenue Systems, thinks so. They have discovered the cost of leasing BMWs is less than what they were paying to recruit new employees.

This is one of the many innovative ideas demonstrated at a recent presentation I attended, "Winning the War for Talent" by Jim Nys. Quotation marks in this article indicate information taken directly from Jim's presentation.

Google is another company that offers employees benefits beyond the "traditional," such as legal services, adoption assistance, emergency/drop-in care for children, dry cleaning pickup, massage, onsite gym, free meals, referral bonuses, plus, plus, plus lots more. Benefits and incentives like these may seem excessive, but they are becoming more and more commonplace.

Seem too over the top for Montana? Surprise! There are companies in Montana, who offer benefits and incentives in this same spirit like signing and referral bonuses, flexible hours, and more. Onsite childcare, gym memberships, and free personal counseling are not unheard of in Park County.

What have companies like these realized? Well, many things...a couple of which are:

### **1. There Is A Changing Workforce**

The size and dynamic of our workforce is evolving. While "the US economy is growing by 24% per year, the annual growth rate of the US Labor Force is 12%." So, the workforce is not only shrinking, it is aging as well. This is especially relevant to us here in Park County, where our unemployment rate was reported at 5.5% in January of 2005. This is below the national average of 5.7% unemployment. This is according to the Department of Labor and Industry, Research & Analysis Bureau's most recent reporting. Sweet Grass County is even lower at 2.8%. So with fewer available workers and a growing number of positions, demand will continue to increase, creating competition for workers.

### **2. Turnover Costs Add Up**

IN THIS ISSUE.....	
New Independent Contractor Regulations .....	Page 1
Is Your Employee Worth a BMW?.....	Page 1
The meaning of TAPS.....	Page 2
Legislation—the end .....	Page 2
Premium Employer .....	Page 3
New Faces .....	Page 3
New Workshops .....	Page 4

There are many costs of turnover both direct and indirect. Jim lists some of the costs as:

- Lost productivity of lost and other employees
- Temporary fill-ins and co-worker overtime
- Cost to advertise, recruit, screen
- Cost to train replacements
- Time spent to review apps, interview, etc.

Estimated costs of turnover range from 35 to 250 percent of the employees' annual salary. "Replacing a \$15,000 employee costs from \$5,000 - \$38,000, depending on the position." The average cost of a private sector employee was \$13,355 in 2004. The information industry is even higher, with an average of \$18,615. "Replacing a minimum wage worker in a fast food restaurant is estimated to cost at least \$500." The frequency of turnover for a fast food worker is 200%. With those figures in mind, one could calculate that if you own a fast food restaurant, it is costing you at least \$16,000 annually to replace your workforce. Could that money be better spent elsewhere?

It is no wonder employers are finding increasingly attractive ways to entice their employees to stay. While leasing BMWs may not be feasible for you, there are countless inexpensive alternatives you can implement to reduce turnover and save money. Here are a few ideas, but do not limit yourself to them.

Free Popcorn	Group fitness activities
Employee of the month	Employee parking space
Bring your child to work day	Company picnics
Play music in the workplace	Flexible work hours

Use your imagination, be creative, and make your workplace a desirable one that your employees will not want to leave.

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### **THE MEANING OF TAPS**

By Robert Kincaid

Most of us have probably heard the haunting song "Taps" played by bugle on TV, military bases and perhaps funerals of former military persons. It's the song that gives us that lump in our throats and usually tears in our eyes. But, do you know the story behind the song? If not, I think you will be interested to find out about its humble beginnings.

Research says it all began in 1862 during the Civil War, when Union Army Captain Robert Ellicombe was with his men near Harrison's Landing in Virginia. The Confederate Army was on the other side of the narrow strip of land. During the night, Captain Ellicombe heard the moans of a soldier who lay severely wounded on the field. Not knowing if it was a Union or Confederate soldier, the Captain decided to risk his life and bring the stricken man back for medical aid.

Crawling on his stomach through the gunfire, the Captain reached the stricken soldier and began pulling him toward his encampment. When the Captain finally reached his own lines he discovered the soldier was a Confederate, but the soldier had died.

The Captain lit a lantern and suddenly caught his breath and went numb with shock. In the dim light, he saw the face of the soldier. It was his own son! The boy had been

studying music in the south when the war broke out. Without telling his father, the boy enlisted in the Confederate Army.

The following morning, heartbroken, the father asked permission of his superiors to give his son a full military burial, despite his enemy status. His request was only partially granted. The Captain had asked if he could have a group of Army band members play a funeral dirge for his son at the funeral. The request was turned down since the soldier was a Confederate. But, out of respect for the father, they did say they could give him only one musician.

The Captain chose a bugler. He asked the bugler to play a series of musical notes he had found on a piece of paper in the pocket of the dead youth's uniform. The wish was granted. The haunting melody, we now know as "Taps"...used at military funerals was born.

The words are...

Day is done...Gone the sun...From the lakes...From the hills...From the sky...All is well...Safely rest...God is nigh...

Fading light...Dims the sight...And a star...Gems the sky...Gleaming bright...From afar...Drawing nigh...Falls the night...

Thanks and praise...For our days...Neath the sun...Neath the stars...Neath the sky...As we go...This we know...God is nigh.

I, too, have felt the chills while listening to "Taps" but I have never seen the words to the song until now. And although I served in the Marine Corps and the Army, never knew the story behind the song until now. I now have an even deeper respect for the song that I did before. Regardless of our political or personal feelings, remember our veterans and those presently serving in the Armed Forces.

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### **LEGISLATION—THE END (finally)**

By Jerri Miller

Here is the final update on bills before this last session of the Legislature.

HB400 raises the minimum weekly UI benefit from 15 to 19% of the average weekly wage in the prior calendar year. Maximum benefits remain at 66.5% and the rate is calculated in May of each year for claims filed after 7/1. This is effective 7/1/05.

HB567—Allows UI benefits for individuals who left or were discharged from work because of circumstances resulting from the individual or their child being a victim of domestic violence, sexual assault or stalking or an attempt was made against the individual or child.

HB667 provides for a new non-profit agency to establish and administer a group purchasing pool for employers of 2-9 employees wanting health insurance. It also establishes a credit of up to \$125 per employee for small businesses who provide coverage. Becomes effective 7/1/05

HB761, SB81 & SB118 clarify several issues dealing with the rights and benefits of National Guard members. Most rights and insurance protections provided by USERRA (Uniformed Services Employment and Re-employment Rights Act) will now pertain to National Guard members who are called up.

SB368 eliminates the requirement for employers to file applications for the Subsequent Injury Fund. The fund remains intact, but the burden of registration shifts to employees and applicants.

SB481 merged the Work Comp and Occupational Disease acts and harmonized the benefits. The Legislature responded to the Supreme Court Decision that found it unlawful for benefits for diseases to be lower than other covered injuries. Effective July 1, 2005.

HB228 which mandated breaks for companies with more than 15 employees missed the transmittal date and is a dead issue until next session.

HB419 which would have removed the limit on economic damages allowed in the case of a wrongful termination missed the transmittal date and is a dead issue.

HB422 would have required employees receiving "public financial assistance" to pay at least 70% of the state's annual average weekly wage if the employer provides an employee group health plan or 75% of the state's annual average weekly wage if the employer does not provide an employee group health plan and would have allowed an employee to file a wage claim. It missed transmittal date and died.

HB472 would have provided individual taxpayers an income tax credit of 50% of the premiums paid for health insurance. The credit was limited to those taxpayers earning less than twice the federal poverty level. Missed transmittal and died.

SB78 would have increased the minimum wage to \$5.65-7/1/05 and \$6.00 on 7/1/2006. This bill failed on a 50/50 party line on the 2nd reading vote in the House. You can plan on seeing it come up again as the AFL-CIO and the original sponsor are both planning for an initiative in 2006.

Look for some upcoming federal law changes. In particular, there is an amendment proposed for the Fair Labor Standards Act which would restore overtime to anyone who lost eligibility last August. It would also increase the salary basis test from current \$23,660 to \$30,712 (\$14.76/hr) and would increase the minimum wage to \$5.85 in 60 days, \$6.55 after 1 year and \$7.25 after 2 years.

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### **BE A "PREMIUM" EMPLOYER**

**By Al Maurillo**

People who manage a business know that recruiting and keeping good employees is getting more difficult. This trend has been developing for the past 5-6 years and is reaching crisis proportions now. Ten years ago, a business could advertise a job and sit back and wait for the applications to come pouring in. Now, the same advertisement gets little or no attention and the people applying, may not be the people you want to hire.

What can we do about this? The answer is to become a "Premium" employer. What does that mean? It means becoming a business that people want to work at. Here are some:

♦ Pay at least as well as your competition. If you can afford to pay slightly more, it's better yet. People like to work for someone who pays a fair wage.

♦ Offer a benefit package. A health plan option, even if substantially paid by the employee is an incentive.

♦ Be **FLEXIBLE**. The Generation X workers of today see work as one of the components of their life, not the most important part. People seek balance between their business and personal lives. Allowing a flexible schedule to accommodate day care or personal pursuits is a big plus.

♦ Let people have control over their environment. The days of the tyrannical manager are gone! Tell your staff what you want to accomplish and let them figure out how to do it. The best manager I know says, "there is more than one right way to do something." The more personal control your employees have over their workday, the happier and more emotionally invested they are! People will accomplish great feats to prove that they're right. Harness that energy for your business.

♦ Have fun at work. People that are relaxed and feel good about what they're doing, perform better. Work should be something to look forward to, not endured.

Try some of these techniques and hopefully you'll become a "Premium" employer and be able to recruit better employees and keep them!

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### **NEW FACE AT LIVINGSTON JOB SERVICE**

Welcome to the newest member of the team—Gail Habener!

I have been with the Bozeman Job Service Workforce Center for 6 years. While in Bozeman I contracted with the Department of Health & Human Services for Case Management working with the TANF Cash Employment Program and the Food Stamp Employment and Training programs and recently have been in the Co-Location Diversion Program.

My husband has reminded me that for the first time since 1988 (!) we will be working in the same town! We (myself, Mark and our 2 dogs, Moana & Zazzy) are thrilled. They will get to have an earlier Frisbee game. I look forward to becoming involved in the Livingston Community!

Gail will join our staff on Monday, June 27th.

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### **LABOR MARKET BOOT CAMP**

**By Jerri Miller**

My counter-parts from the Bozeman JSWC, Nancy Axtell and Dexter Wester and I recently attended the first-ever Labor Market Boot Camp in Helena. Sponsored by the Research and Analysis Division of the Department of Labor and Industry, this program was designed to provide field technicians (us) with the information necessary to help our local employers find the answers to questions dealing with such

fun topics as Prevailing Wages, Unemployment Insurance statistics, #'s of individuals working in specific occupations and all sorts of other information.

This information is available to you to help make your decisions about how many people to hire, what wage to start them at, how many people there are statewide who have the background and experience you are looking for. This is great information, and is available to you on R&A's excellent web-site at <http://www.ourfactsyourfuture.mt.gov/>. Of course, you can always contact us and we'll look up the information for you.

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### **UPCOMING WORKSHOP**

**September 15, 2005—8:00 am to noon**

Jim Nys, PHR, MPA and President of Personnel-Plus Consulting Services will present a 4-hour program addressing Fair Employment Laws. The material addresses Equal Employment Opportunity laws, to include the Federal Fair Labor Standards Act (FLSA) and the Montana Human Rights Act (MHRA). There is also a little known code called the "Governmental Code of Fair Practice". One of the better kept secrets around, but it's still a very important part of our Human Rights laws in Montana.

Did you know that the Montana Constitution speaks specifically to Individual Dignity and the Right of Privacy?

Did you know there are several forms of Discrimination?

What about suspect questions on your application forms or when you conduct interviews?

Jim's presentation will focus on these and other questions that can help save you from an EEO complaint and/or a Wrongful Discharge From Employment claim.

Jim Nys is owner of Personnel Plus! Consulting Services, Inc. (ppcs) in Helena. PPCS helps employers in more than a dozen states with developing human resource management systems (policies, procedures, pay systems, etc.) and resolving employee related issues including grievances, compliance actions and similar topics.

Jim has a Master's in Public Administration, is a certified professional in human resources and teaches employment related topics for four different universities at the graduate level. He has been the SHRM Montana state lobbyist since 1987 and was on two SHRM national committees.



Please contact our office at 222-8901 for cost and location of this workshop. The hours will be 8 am to noon and pre-registration is absolutely required by September 13th. Contact your Livingston Job Service Workforce Center at 222-0520 to pre-register.

**FREE POSTERS**  
Call 222-0520

PRESORTED STANDARD

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